



Structural Pest Control Bulletin

Britt Cobb, Commissioner

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INVESTIGATION BY NCDA&CS STRUCTURAL PEST CONTROL DIVISION NETS CONVICTION OF LEXINGTON MAN FOR UNLICENSED WORK

A Lexington man was recently convicted in Guilford County District Court of performing unlicensed pest control work following an investigation by the N.C. Department of Agriculture and Consumer Services' Structural Pest Control Division.

As a result of the conviction, Michael Thomas Harrison received a 45-day suspended sentence, was ordered not to work in the pest control industry for two years and must repay the owner of the home he treated the \$645 that was charged for services. He was also ordered to pay a \$200 fine plus cost of court and was given three years of supervised probation.

"State pest control laws are designed to protect consumers against deceptive and unscrupulous practices, and our Department follows up on all complaints regarding possible wrongdoing," said Agriculture Commissioner Britt Cobb. "Consumers need to know they can count on the pest control services being performed on their homes to protect their investment."

An investigation revealed Harrison took the initial call the homeowner made to the Greensboro office of Southeastern Exterminating, where Harrison worked. He allegedly scheduled an appointment, performed the service and requested the payment be made out in his name. Harrison also reportedly gave the homeowner his cell number for future work.

Under state law, Harrison was allowed to perform structural pest control services under the license of the pest control company, but he was not licensed to perform work on his own.

Division staff followed up on calls by both the homeowner and the pest control company, after the owner contacted the company and her name and property were not listed in the company's database.

"Homeowners who have questions about their pest control service can contact our division at (919) 733-6100," said Carl Falco, director of the NCDA&CS Structural Pest Control Division.



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STRUCTURAL PEST CONTROL DIVISION EMPLOYEE NEWS

Ms. Francis Jones has joined our staff as a Processing Assistant. Ms. Jones was previously employed with the NCDA&CS Veterinary Division.

Mr. Earl Smith has joined our staff as a field inspector. Mr. Smith is responsible for 20 counties in the northeastern part of the state. Mr. Smith is a graduate of John Wesley College in High Point and has over 17 years experience in the pest control industry.

WDIR ACCREDITATION PROGRAM

The Division has recently received several inquiries concerning the WDIR Accreditation Program given over the past year by the North Carolina Pest Control Association. Most of these questions deal with registration, pricing, location and dates of future programs and examination information. While the Division does participate in the training program, the portion in which the regulatory aspects of completing a WDIR are discussed, the overall administration of the program is conducted by the N.C. Pest Control Association.

PCO's should direct any questions about this program to the N.C. Pest Control Association at 800-547-6071 or visit the NCPCA web site at www.ncpca.org

COMING EVENTS



OCTOBER

October 5, 2004 9:30 AM

License/Certified Applicator Exam
McKimmon Center
Corner of Gorman St. & Western Blvd.
Raleigh, N.C.
(919) 733-6100

October 7, 2004 8:30 AM

Registered Technician School
Carbarrus County Extension Center
715 Cabarrus Avenue-West
Concord, N.C.
(919) 733-6100

October 14, 2004 1:00 PM

Certified Applicator Exam
Henderson County Extension Center
2016 Fanning Bridge Road
Fletcher, N.C.
(919) 733-6100

October 20, 2004 1:00 PM

Certified Applicator Exam
Forsyth County Extension Center
1450 Fairchild Drive
Winston-Salem, N.C.
(919) 733-6100

October 27, 2004 8:30 AM

Registered Technician School
NCDA&CS Building Room 359
2 West Edenton Street
Raleigh, N.C.
(919) 733-6100

NOVEMBER

November 2, 2004 9:30 AM

License/Certified Applicator Exam
McKimmon Center
Corner of Gorman St. & Western Blvd.
Raleigh, N.C.
(919) 733-6100

November 14, 2004 1:00 PM

Certified Applicator Exam
Senator Bob Martin Eastern Ag. Center
2900 NC Highway 125 South
Williamston, N.C.
(919) 733-6100

November 16, 2004 8:30 AM

Registered Technician School
Forsyth County Extension Center
1450 Fairchild Dr.
Winston-Salem, N.C.
(919) 733-6100

DECEMBER

December 1, 2004 8:30 AM

Registered Technician School
NCDA&CS Building Room 359
2 West Edenton St.
Raleigh, N.C.
(919) 733-6100

December 14, 2004 9:30 AM

License/Certified Applicator Exam
McKimmon Center
Corner of Gorman St. & Western Blvd.
Raleigh, N.C.
(919) 733-6100

December 16, 2004 8:30 AM

Registered Technician School
Henderson County Extension Center
740 Glover St.-Jackson Park
Hendersonville, N.C.
(919) 733-6100

OCTOBER

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SPCC ADOPTS FINAL PRETREAT RULE

At the June 22 meeting the Structural Pest Control Committee adopted the final amendment to preconstruction termite treatment rules. The amendment adds standards for pretreat warranties at 2 NCAC 34 .0605(15) and was the product of lengthy study and consideration by SPCD personnel and the NCPCA Rules Committee.

This rule puts in place the following requirements for pretreat warranties:

- The initial warranty must be for at least one year and may begin no earlier than the date of the final treatment
- The warranty must be renewable and transferable for a minimum of four additional years
- The warranty must cover retreatment for subterranean termites but may be expanded to cover repair of damage

Although the Rules Review Commission placed an effective date of August 1, 2004 on the amendment, the SPCD will not begin rigid enforcement of this rule until October 1, 2004. PCOs should review their contracts and make necessary changes to ensure compliance.

REQUIRING BOOSTER TREATMENTS CAN BE A VIOLATION

The Division has recently received a number of complaints from homeowners who have received written notice from their pest control company that a termite “booster treatment” would have to be performed on their property. The notices stated that the new treatment was required for the PCO’s property damage warranty to remain in effect. The PCO’s notice stated that the booster treatment would be provided when the property owner agreed to pay a fee in addition to the annual renewal fee. If the property owner opted not to pay for this additional treatment, then the PCO’s warranty would provide coverage only for re-treatment. The PCO’s notice explained that the booster treatment was needed because the termiticide used during the original treatment of the home broke down and become ineffective after about five years.

Please note that 02 North Carolina Administrative Code (NCAC) 34 .0101(a)(1) states:

“All licensed structural pest control operators shall faithfully and honestly carry out the provisions and terms of all contracts into which they enter for the control of structural pests.”

Requiring a booster treatment for an additional fee as a condition to continuing an existing warranty is a unilateral change to an existing contract between a PCO and its customer. Any such change which diminishes a customer’s rights and/or protections from warranties violates 02 NCAC 34 .0101. There are two conditions in which such a change would be lawful:

- 1) if the written agreement with the property owner contains specific language with regards to this new additional treatment;
- 2) if the property owner agrees to change the existing contract and receives something additional of value (consideration) for his agreement to pay an additional fee for the new “booster” treatment.

Examples, for the first condition:

- The written agreement states that a booster treatment for an additional fee will be required after a specified number of years.
- The written agreement states that a booster treatment for an additional fee will be required at such time that research shows that the termiticide used can no longer be expected to provide protection of the structure. When the PCO invokes this clause in the agreement, he must at least be able to cite the specific information relevant to the termiticide used to treat the structure in question. (see discussion of this topic below)

An example, for the second condition:

- The PCO sends a notice offering to change the original service contract, to provide a new booster treatment believed to be more effective than the original treatment, stating clearly that a one-time fee of \$100 dollars would be charged. In exchange, the annual renewal fee would be reduced by twenty percent. The property owner is given thirty days to accept or reject this offer to amend the original agreement. However, if the property owner rejects it, the PCO remains bound by the original agreement.

An example of when a company could not require a booster treatment would be as follows. ABC Exterminators has a contract that states that the property owner may extend the warranty on an annual basis for the life of the property as long as annual renewal fee is paid on or before the anniversary date of the contract. In this case the booster treatment could not be forced on the property owner. As long as the renewal is paid on time then the original warranty agreed upon will stay in force.

Some PCOs have notified their customers that a booster treatment is needed due to the termiticide breaking down after a certain number of years. Any statement informing customers or the public that a termiticide is less effective after a given period of time following application must be supported by reliable data. Sources of such data include the termiticide manufacturer, a consumer product testing organization (like the U.S. Forest Service Southern Research Station) or a peer-reviewed scientific study issued by a university chemistry or entomology department. Any representation lacking such support may be a violation of 02 NCAC 34 .0904(h), which prohibits “...publication, advertisement, distribution, or circulation of any material by false statement or representation concerning the licensee’s structural pest control business” Furthermore, licensees must be careful about how such data are used. Any misuse of data or recommendations published by an agency of the state or Federal governments may also violate 02 NCAC 34 .0904(c) which states “In solicitation of structural pest control business, no licensee or his employees shall claim that inspections or treatments are required, authorized, or endorsed by any agency of the federal government or North Carolina State, county, or city government unless said agency states that an inspection or treatment is required for a specific structure.”

**SETTLEMENT AGREEMENTS APPROVED AT THE JUNE 22, 2004
STRUCTURAL PEST CONTROL COMMITTEE MEETING**

1. Robert L. Jones of Budget Pest Prevention Inc. in Monroe agreed to pay \$300 for not applying for a registered technician card for a new employee within 75 days of starting work as required by law.
2. Preston B. Sandlin of Termite Specialists in Charlotte agreed to pay \$400 for failing to properly supervise an employee working under his license who issued an inaccurate Wood Destroying Insect Report. Sandlin also submitted an invoice to the customer under a different business name than the one contracted to do the work.
3. In the same case, Eric J. Wheaton of Termite Specialists in Charlotte agreed to pay \$400 for issuing an inaccurate WDIR. Wheaton indicated on the report that the home had been fully treated for termites when it had not been. The contract also did not specify the type and quality of work to be performed, did not contain a foundation diagram indicating areas of infestation or damage, failed to indicate carpenter bee evidence, and failed to disclose the high moisture content under the front porch.
4. Leo G. Lamoureux of Atlantic Termite Control Co. agreed to pay \$800 for issuing an inaccurate WDIR. An inspection by the N.C. Department of Agriculture and Consumer Services' Structural Pest Control Division found evidence of inactive powder post beetles, inactive termites and conditions in the crawlspace conducive to subterranean termites, all of which should have been listed in the WDIR.
5. Emil H. Walker III of Gregory Termite and Pest Control in Hendersonville agreed to pay \$400 for operating a branch office without registering it with the Structural Pest Control Division or placing a licensee in the office. The office has since been registered and has a licensee.
6. Johnny H. Sellers Jr. of Terminix Co. of N.C. in Southern Pines agreed to pay \$400 for failing to properly supervise an employee working under his license.
7. In the same case, Ryan S. Pourroy of Terminix Co. of N.C. in Southern Pines agreed to pay \$800 for contaminating a vegetable garden while applying CY-KICK CS on a yard to kill fire ants. The insecticide label states that it should not be sprayed directly on food products.
8. Andy Blake of Pestco Exterminating Co. in Wilmington denied wrongdoing but agreed to pay \$400 for improperly performing a new-construction termite treatment. An inspection at the construction site found that the pesticide was applied to soil that was saturated and had standing water. The inspectors observed white milky liquid, believed to be the pesticide, outside and away from the foundation walls. The law states that pesticides should not be applied when conditions at the site of application favor drift or runoff from the target site. Blake also agreed to attend a certified training course within 12 months.
9. Michael C. Webb of Terminix Co. of East Carolina in Goldsboro denied wrongdoing, but agreed to pay \$400 for failing to properly supervise an employee working under his license. The employee did not remove the insulation before spraying Timbor as the contract required.
10. Rex K. Booth of Clegg's Termite and Pest Control Inc. in Durham agreed to pay \$600 for not properly supervising employees working under him. The fine will be suspended if four hours of training are provided within six months for current and new employees who perform termite treatments. Two Clegg's employees were videotaped treating two areas of construction at the Nasher Art Museum at Duke University in Durham. The employees did not wear personal protective equipment as required by law, nor did they properly treat the concrete slabs. Clegg's also agreed to issue a five-year damage repair warranty to the museum for any damage caused by termites.

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